

EOEA GUIDANCE DOCUMENT ON ENVIRONMENTAL JUSTICE AND MEPA REVIEW

Introduction

On October 19, 2002 the Secretary of Environmental Affairs adopted an Environmental Justice Policy for all state environmental agencies within the Executive Office of Environmental Affairs (EOEA). As stated in the policy:

“Environmental justice is based on the principle that all people have a right to be protected from environmental pollution and to live in and enjoy a clean and healthful environment. Environmental justice is the equal protection and meaningful involvement of all people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies and the equitable distribution of environmental benefits.”

The EJ Policy affects certain projects subject to review by EOEa under the Massachusetts Environmental Policy Act (MEPA), M.G.L. ch.30, ss. 61-62H, and the MEPA Regulations, 301 CMR 11.00. The purpose of this document is to provide guidance regarding the effects of the EJ Policy on MEPA review to project proponents, reviewing agencies, and other participants in the review process.

Overview of the EJ Policy

The Environmental Justice Policy builds on the national environmental justice framework in ways that reflect the needs and circumstances specific to Massachusetts. It targets EOEa resources to service those high-minority/low-income neighborhoods in Massachusetts where the residents are most at risk of being unaware of or unable to participate in environmental decision-making. Working with these EJ populations, EOEa will take direct action as part of the implementation of this policy to restore degraded natural resources (21E hazardous waste/brownfield sites), to increase access to open space and parks, and to address environmental and health risks associated with existing and potential new sources of pollution by:

- Enhancing opportunities for residents to participate in environmental decision-making;
- Enhancing the environmental review of new or expanding large sources of air emissions and regional waste facilities in these neighborhoods;
- Ensuring that all existing facilities in these neighborhoods comply with all environmental rules and regulations; and
- Encouraging investments in economic growth in these neighborhoods where there is existing infrastructure, in particular where opportunity exist to clean up a contaminated site and encourage its clean, productive use.

Applicability of the Environmental Justice Policy to MEPA Review

Sections 14 and 15 of the EJ Policy specifically refer to the MEPA review process. The policy has been crafted in a manner that is consistent with the underlying principles of MEPA review: a high degree of public participation, bright-line regulatory thresholds, and short time periods for review.

Section 14 of the EJ Policy defines certain projects that will be subject to enhanced public participation during the Environmental Notification Form (ENF) stage. Section 15 of the EJ Policy defines certain projects that will be subject to enhanced impacts review during the Environmental Impact Report (EIR) stage of review.

In each case, the EJ Policy takes effect if both the following conditions apply to a project:

- 1) The project exceeded one of the review thresholds listed in the policy; and
- 2) An EJ Population is located within the project's Potential Impact Zone (PIZ).

Determination of Environmental Justice Populations

EJ Populations are those segments of the population that EOEA has determined to be most at risk of being unaware of or unable to participate in environmental decision-making or to gain access to state environmental resources. Many of these EJ populations are located in densely populated urban neighborhoods, in and around the neighborhoods encompass only a small portion of the land area of the Commonwealth, but they host, or are in close proximity to many of the state's contaminated and abandoned sites and large sources of air emissions.

EJ Populations are defined as neighborhoods (U.S. Census Bureau census block groups) that meet one or more of the following criteria:

- The median annual household income is at or below 65 percent of the statewide median income for Massachusetts; *or*
- 25 percent of the residents are minority; *or*
- 25 percent of the residents are foreign born; *or*
- 25 percent of the residents are lacking English language proficiency.

Block groups are delineated by the Census Bureau based on prominent features such as roads and rivers. Blocks groups average about 1500 people. Because some areas are less densely populated than others, the size (area) of a block group can vary widely.

EOEA has prepared maps that identify the EJ Populations in Massachusetts that meet one or more of the above criteria, based on 2000 U.S. Census data currently available to MASSGIS. The maps are available at www.state.ma.us/mgis/ej.htm

ENF Review – Enhanced Public Participation

Public participation is a process that engages the public in decision- making, and the use of public input to make decisions.

The following conditions determine whether a project will be subject to the EJ Policy during the Environmental Notification Form (ENF) stage of review:

- 1) Does the project exceed any of the following ENF thresholds?
 - 301 CMR 11.03(5)(b)(1), (Wastewater)
 - 301 CMR 11.03(5)(b)(2), (Wastewater)
 - 301 CMR 11.03(5)(b)(5), (Wastewater)
 - 301 CMR 11.03(8)(b), or (Air)
 - 301 CMR 11.03(9)(b). (Solid and Hazardous Waste)
- 2) Is the project site located within one mile of an EJ population (or in the case of projects exceeding the ENF threshold for air, within five miles of an EJ Population)
 - 301 CMR 11.03(5)(a)(1) (Wastewater)
 - 301 CMR 11.03(5)(a)(6) (Wastewater)
 - 301 CMR 11.03(8)(a), and (Air)
 - 301 CMR 11.03(9)(a) (Solid and Hazardous Waste)

Enhanced public participation will be required for all projects that meet both of the above conditions, starting during the ENF stage, as they undergo review in accordance with MEPA. Enhanced public participation may include use of alternative media outlets such as community or ethnic newspapers, use of alternative information repositories, and translation of materials or interpretation services at public meetings where the relevant EJ Population uses a primary language other than English. Where the affected EJ community lacks English language proficiency, outreach efforts should be made in the applicable language. The alternate ethnic media used may include newspapers, radio or television, depending on the most effective way to outreach that community.

Traditional information repositories include libraries, town and city halls and other municipal offices. Alternative information repositories to reach EJ populations may include community-based organizations, health centers, and other venues that serve EJ populations.

It is recommended that project descriptions translated in the relevant language/s be sent to alternative information repositories, along with any notices of public hearings and/or community meetings. These notices should address ways that interpreter services will be provided if requested, or that they will be available when there is sufficient knowledge that the participants speak a language other than English.

Proponents are encouraged to outreach to Environmental Justice Populations Public prior to submitting their projects, in a way that affords the maximum public participation by those populations.

Alternative media and information repository lists can be found in the Environmental Justice web page of the Executive Office of Environmental Affairs site: www.mass.gov/envir

Proponents are encouraged to consult with the EJ Coordinator or MEPA prior to filing their plans. The EJ Coordinator can assist proponents in identifying alternative media and information repositories.

EIR Review – Enhanced Analysis of Impacts and Mitigation

In addition to the enhanced public participation requirements specified above, the following conditions determine whether a project will be subject to the enhanced analysis requirements of the EJ Policy during the Environmental Impact Report (EIR) stage of review.

- (1) Does the project exceed any of the following EIR thresholds?
 - 301 CMR 11.0(5)(a)(1), (Air)
 - 301 CMR 11.03(5)(a)(6), (Solid Waste)
 - 301 CMR 11.03(8)(a), or
 - 301 CMR 11.03(9)(a); and
- (2) Is the project site located within one mile of an EJ Population (or in case of projects exceeding a mandatory EIR threshold for air, within five miles of an EJ Population)?

Enhanced analysis of impacts and mitigation will be required starting during the EIR state for all projects that meet both of the above conditions, as they undergo review in accordance with MEPA. Enhanced analysis of impacts and mitigation may include analysis of multiple air impacts; data on baseline public health conditions within the affected EJ Population; analysis of technological, site-planning, and operational alternatives to reduce impacts; and proposed on-site and off-site mitigation measures to reduce multiple impacts and increase environmental benefits for the affected EJ Population. The project proponent may submit actual air modeling data on the project's area of potential air impacts in its EIR to modify the presumed five-mile impact area referred to in condition (2) above.

When required, Environmental Impact Reports must address the cumulative risks and impacts on EJ communities. Cumulative risks are the combined risks from aggregate (multi-pathway, multi-source, multi-route, over time) exposures to multiple agents or stressors. Cumulative impact is defined as “the incremental impact of the action, when added to other past, present, and reasonably foreseen future actions, regardless of what agency or person undertakes such other actions.”

Notices of Project Change (NPC)

In meeting the requirements of the EJ policy statement of purpose, by enhancing the environmental review of new or expanding large sources of air emissions and regional waste facilities, Notices of Project Change (NPC) that propose a material change or increases significantly the original impact (amount of emissions or tonnage), and is located within one mile of an EJ population, or in the case of air, within five miles of an EJ population, shall require the enhanced public participation, referred to in paragraph 14 of the EJ policy.

Transition Period (Grandfathering)

Projects that have filed an Environmental Notification Form (ENF) prior to October 1, 2002, shall not be subject to the provisions of the EJ Policy, unless there is a subsequent material change in the proposed project.

Environmental Justice Compliance Determination

The Environmental Justice Coordinator shall review all ENF, NPC, and EIR submittals prior to their publication in the Environmental Monitor. Within two business days of the publication of the monitor, the EJ coordinator shall inform the appropriate MEPA analyst that a project meets the conditions that require enhanced public participation, or in the case of an EIR, enhanced analysis of impacts and mitigation.

In addition, the Environmental Justice Coordinator will submit a written determination whether or not the project proponent has met the outreach and public participation recommendations outlined above.

EOEA Environmental Justice Coordinator

For further information on the Environmental Justice Policy, contact EOEA's Environmental Justice Coordinator, Tony Chaves. He may be reached at (617) 626-1009 or via email: tony.chaves@state.ma.us

Internal Guidance

1. MEPA will amend the ENF form to include a check-off mark for Environmental Justice, indicating whether or not a proposed project meets both conditions (threshold and proximity to EJ populations) for enhanced public participation.
2. MEPA will post this guidance document on their web site and include in it any information packages that are available to project proponents and the general public.
3. MEPA will also provide a link to the Environmental Justice web site
4. If any project submitted to MEPA is not in compliance with the EJ enhanced public participation requirements, MEPA will inform the proponents that they may request an extension of the public comment period.
5. MEPA shall appoint a representative to EOE's Environmental Justice Working Group, who will be a point person for the EJ Coordinator in regards to EJ/MEPA issues.